

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
FLORENCE DIVISION

THOMAS BRADFORD WATERS,	)	Civil Action No.: 4:15-cv-4143-RBH-TER
	)	
Plaintiff,	)	
	)	
-vs-	)	
	)	
	)	
LAKE CITY POLICE OFC. JOHN	)	<b>REPORT AND RECOMMENDATION</b>
STEWART, LAKE CITY POLICE OFC.	)	
MARK STRICKLAND, LAKE CITY	)	
POLICE OFC. SGT. ANTHONY	)	
BACKHUSS, LAKE CITY POLICE OFC.	)	
JODY COOPER, ATF AGENT ALAN	)	
C. STRICKLAND,	)	
	)	
Defendant.	)	
_____	)	

Plaintiff, who is proceeding pro se, brings this action, alleging violations of his constitutional rights pursuant to both 42 U.S.C. § 1983 and Bivens v. Six Unknown Federal Narcotics Agents, 403 U.S. 388, 91 S.Ct. 1999, 29 L.Ed.2d 619 (1971). Presently before the court is Plaintiff's Motion for Default Judgment (Document # 25). All pretrial proceedings in this case were referred to the undersigned pursuant to the provisions of 28 U.S.C. § 636(b)(1)(A) and (B) and Local Rule 73.02(B)(2)(d), DSC. This report and recommendation is entered for review by the district judge.

On December 30, 2015, the undersigned entered an order (Document # 9) authorizing service of process as to Defendants Stewart, Strickland, Backhuss, and Cooper, and entered a separate report and recommendation (Document # 11) recommending summary dismissal of the claims against Defendant Townsend. The summonses were issued that same day, and the docket entry (Document # 13) notes that service was due by April 1, 2016. The summonses for Stewart and Strickland were served on January 22, 2016, with answers due February 12, 2016. See Summons Returned Executed (Document # 22). The summons for Backhuss was served on February 23, 2016. See Summons

Returned Executed (Document # 32). The docket does not reflect whether Defendant Cooper has been served. Nevertheless, an answer was filed on behalf of Defendants Stewart, Strickland, Backhuss, and Cooper on February 4, 2016. Answer (Document # 24). A copy of the answer was served via certified mail, return receipt requested, on February 5, 2016. See Certificate of Service (Ex. to Def. Resp.). The answer was received by the Florence County Detention Center on February 8, 2016. See Return Receipt (Ex. to Def. Resp.). Service has not been authorized as to Defendant Townsend, and the recommendation to dismiss Townsend from this action is pending before the district judge.

Plaintiff argues that an answer should have been filed within twenty-one days of December 30, 2015, the day this court authorized service. However, Fed.R.Civ.P. 12(a)(1)(A)(i) requires a defendant to serve an answer within twenty-one days after being served with the summons and complaint, not when service is authorized by the court. Because Defendants Stewart, Strickland, Backhuss, and Cooper timely served their answer and service has not been authorized on Defendant Townsend, default judgment is not appropriate. Thus, it is recommended that Plaintiff's Motion for Default Judgment (Document # 25) be denied.

s/Thomas E. Rogers, III  
Thomas E. Rogers, III  
United States Magistrate Judge

April 29, 2016  
Florence, South Carolina

**The parties are directed to the important information on the following page.**